

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

LONNIE GARNER, JR.
Carlisle, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LONNIE GARNER, JR.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 34A02-0609-CR-763
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable William C. Menges, Judge
Cause No. 34D01-0011-CF-00283

FEBRUARY 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Lonnie Garner, Jr., appeals the trial court's denial of his motion to correct erroneous sentence.

We affirm.

ISSUE

Garner presents one issue for our review, which we restate as: whether the trial court erred by denying his motion to correct erroneous sentence.

FACTS AND PROCEDURAL HISTORY

On March 26, 2001, a jury found Garner guilty of unlawful possession of a firearm by a serious violent felon, a Class B felony. For this conviction, the trial court sentenced Garner to fifteen years at the Indiana Department of Correction. Garner filed a motion to correct erroneous sentence on May 17, 2004. On July 12, 2004, the trial court granted Garner's motion and ordered that he be granted 171 additional days of credit toward his sentence to reflect his time of confinement awaiting sentencing. On August 4, 2006, Garner filed another motion to correct erroneous sentence. The trial court denied this motion, and Garner pursued the instant appeal.

DISCUSSION AND DECISION

As his sole issue on appeal, Garner contends that the trial court erred by denying his motion to correct erroneous sentence filed on August 4, 2006. The crux of Garner's August 4, 2006 motion is that the trial court failed to comply with Ind. Code § 35-38-1-15, the statute providing for motions to correct sentence, when it granted his May 17, 2004 motion to correct erroneous sentence. Ind. Code § 35-38-1-15 provides:

If the convicted person is erroneously sentenced, the mistake does not render the sentence void. The sentence shall be corrected after written notice is given to the convicted person. *The convicted person and his counsel must be present when the corrected sentence is ordered.* A motion to correct sentence must be in writing and supported by a memorandum of law specifically pointing out the defect in the original sentence.

(Emphasis added). Garner argues that the trial court erred by its failure to have him present in court when it issued its order correcting his sentence.

Our supreme court has set forth a strict rule regarding the use of motions to correct sentence. In *Robinson v. State*, 805 N.E.2d 783 (Ind. 2004), the court held that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. 805 N.E.2d at 787. Claims that require consideration of the proceedings before, during, or after trial, or reference to other matters in or extrinsic to the record may not be presented by way of a motion to correct sentence. *Id.* at 787 and 788. To be clear, the court further stated “[a]s to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.” *Id.* at 787.

Garner asserts that the trial court failed to comply with the statutory requirement of Ind. Code § 35-38-1-15 when it did not have him present in the courtroom when it issued his amended sentence. In doing so, he alleges an error that would require consideration of matters outside the face of the sentencing judgment. This claim is the type of claim that may not be asserted by a motion to correct sentence. *See Robinson, supra*; *see also Hoggatt v. State*, 805 N.E.2d 1281, 1284 n.2 (Ind. Ct. App. 2004), *on*

reh'g, 810 N.E.2d 737, *trans. denied* (citing *Robinson* and stating that although Hoggatt's claim could be determined by reviewing the CCS, it could not be determined from the face of the sentencing judgment and required reference to matters in the record such that it was not properly brought as a motion to correct sentence). Thus, the trial court properly denied Garner's August 4, 2006 motion to correct erroneous sentence.¹

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the trial court properly denied Garner's motion to correct erroneous sentence.

Affirmed.

SHARPNACK, J., and CRONE, J., concur.

¹ In his brief, Garner very briefly claims error with the abstract of judgment. Although he presents no argument on the issue, we feel compelled to note that a motion to correct erroneous sentence may not be used to seek corrections of claimed errors or omissions in an abstract of judgment. *Pettiford v. State*, 808 N.E.2d 134, 136 (Ind. Ct. App. 2004) (citing *Robinson*, 805 N.E.2d at 794).